

² The Board notes that, following the September 19, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal. 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On July 9, 2018 appellant, then a 28-year-old city carrier assistant 2, filed a traumatic injury claim (Form CA-1) alleging that on March 21, 2018 he sustained an infection to his left middle finger when he scraped it open on the metal door latch while getting out of his long-life vehicle while in the performance of duty. On the reverse side of the claim form the employing establishment controverted the claim noting that it had not been filed within 30 days.

In an August 13, 2018 development letter, OWCP notified appellant that the information he submitted was insufficient to support his claim. It advised him of the type of factual and medical evidence required to establish his traumatic injury claim. OWCP requested a narrative medical report from appellant's physician and attached an attending physician's report (Form CA-20) for completion. It afforded appellant 30 days to respond.

In a hospital note dated March 26, 2018 by Thomas J. Davey, a physician assistant, appellant reported that he injured his left finger when he scraped it on a piece of metal while getting out of his work vehicle. He was diagnosed with a finger infection and lymphadenopathy. Mr. Davey prescribed antibiotics and appellant was asked to follow up in two to three weeks.

By decision dated September 19, 2018, OWCP denied appellant's traumatic injury claim finding that he had not submitted medical evidence containing a medical diagnosis in connection with his accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined under FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,⁴ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁵ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must

³ *Supra* note 1.

⁴ *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁷

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a left hand injury in the performance of duty on March 21, 2018, as alleged.

In a report dated March 26, 2018, Mr. Davey diagnosed a finger infection and lymphadenopathy. Mr. Davey is a physician assistant and his report was not countersigned by a physician.⁸ Therefore, this report is entitled to no probative weight because physician assistants are not considered physicians as defined under FECA.⁹ Consequently, the medical findings and/or opinions of a physician assistant will not suffice for purposes of establishing entitlement to compensation benefits.¹⁰

As appellant has not submitted sufficient medical evidence to establish a medical diagnosis in connection with the accepted employment incident, the Board finds that he has not met his burden of proof to establish a traumatic injury in the performance of duty on March 21, 2018, as alleged.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a left hand injury in the performance of duty on March 21, 2018, as alleged.

⁷ *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

⁸ 5 U.S.C. § 8101(2). Under FECA the term “physician” includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by the applicable state law; *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

⁹ *Id.*

¹⁰ *K.W.*, *supra* note 8.

ORDER

IT IS HEREBY ORDERED THAT the September 19, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 4, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board